APPLICANTS: **Randy E. Reinecke and** **William H. Reinecke, III**	**BEFORE THE** **ZONING HEARING EXAMINER**
REQUEST: A request to rezone 6.03 acres from AG Agricultural to RR Rural Residential District	**FOR HARFORD COUNTY** **BOARD OF APPEALS**
HEARING DATE: November 28, 2007	**Case No. 172**

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Randy E. Reinecke

CO-APPLICANT: William H. Reinecke, III

LOCATION: 2151 Carrs Mill Road, southeast corner of Carrs Mill Road and Mill Dale Court, Fallston
Tax Map: 48 / Grid: 3B / Parcel: 171
Third (3rd) Election District

ZONING: AG / Agricultural District

REQUEST: A request pursuant to Section 267-12A of the Harford County Code, to rezone 6.03 acres from AG/Agricultural District to a RR/Rural Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants are the owners of that 6.03 acre parcel located on Carrs Mill Road, Fallston, Maryland. The property is improved by a single family dwelling and accessory structures.

According to the Staff Report, the subject property is known as "Lot 1", having been created in 1983 from a larger tract containing approximately 40 + acres. The remaining part of the larger parcel was developed into what is now known as the Mill Dale subdivision.

William H. Reinecke, III, Co-Applicant, testified that the subject property is bordered on its southwesterly side by the Fallston Volunteer Fire Company facility on Carrs Mill Road, while to the north and east is the residential community of Mill Dale. Single family dwellings are also located on the west side of Carrs Mill Road. The Fallston High School is located approximately 300 feet southwest of the subject property.

The witness indicated that he and his brother own the property, with the property having been in their family since 1983. The Applicants grew up on the subject property.

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The Applicants requested RR zoning during the 2005 comprehensive rezoning. The Harford County Council agreed, with that legislation being subsequently vetoed by County Executive Craig. The witness indicated that no objections to the requested rezoning have been heard from any of his neighbors, and the Fallston Volunteer Fire Company actively supports the rezoning. (See Applicants' Exhibit 19.) William Reinecke explained that it is the intent of he and his brother, once the requested rezoning to RR is secured, to subdivide the property into two lots.[1]

The Applicants have spoken to all neighbors, and all are in agreement with the requested rezoning. William Reinecke emphasized that he and his brother intend to keep the property in the family.

Next for the Applicants testified Mitch Ensor of Bay State Land Services. Mr. Ensor was offered and accepted as an expert in land development and site plan design. Mr. Ensor identified the subject property as being located at the southeast corner of Carrs Mill Road and Mill Dale Court, both of which are improved roadways. The topography of the area slopes generally, and gently, from west to east.

No environmental features exist on-site, and forest cover is minimal.

Mr. Ensor explained that the 6.03 acre parcel could be subdivided into as many as three lots under RR zoning. The property is bound by both AG and RR zoned properties. To the west is located the Fallston Volunteer Fire Company property, which is zoned AG. The Fallston High School is to the west of the Fire Company property. To the north and east is the Mill Dale subdivision, with RR zoning. To the west is Mill Dale and the Belle Meade subdivision both being zoned RR.

Mr. Ensor then described the zoning history of the subject property. Prior to 1990, the parcel out of which the subject property was subdivided had mixed ORI and AG zoning. The AG zone is to the Carrs Mill Road side of the property.

In 1990, pursuant to a piece-meal zoning request, the zoning classification of the larger portion of the original parcel was changed to RR. However, the subject parcel retained its AG zoning. According to Mr. Ensor, the Board of Appeals in that case found that RR was consistent with the then Harford County Master Land Use Plan, and would be compatible with surrounding uses.

In Mr. Ensor's opinion, the rezoning of the subject parcels to RR from AG will have no material adverse impact on any adjoining parcel. RR zoning is consistent with the Harford County Master Land Use Plan. He believes that to continue AG zoning of the property is inconsistent with the Harford County Master Land Use designation for the property. The property is not a suitable parcel for agricultural use because of its size.

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[1] If the rezoning request is approved, the Applicants could subdivide as many lots as Subdivision Regulations would allow in the RR District, not necessarily limited to a total of two lots.

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Mr. Ensor believes that the Harford County Council made a mistake in 1997 in failing to then zone the parcel to RR/Rural Residential, in light of the 1990 piece-meal zoning decision which found that the balance of the property should be zoned RR.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune confirmed that the property has been agriculturally zoned since 1957. A request was made to rezone the property in the year 2005 to RR. That requested rezoning was approved by the Council but vetoed by County Executive Craig.

The Applicants are not claiming a change in neighborhood. The Applicants are claiming a mistake was made in 1997. Mr. McClune and the Department, however, believe that no mistake occurred. Many AG/Agricultural zoned properties are located within the district of the subject property. While the requested RR zoning is not inconsistent with the Harford County Master Land Use Plan, the Department finds that the continued designation of the property as AG is also consistent with the Harford County Master Land Use Plan.

The Staff Report notes that the subject property is designated as Rural Residential on the 2004 Master Plan, defined as follows:

> *"Rural Residential – Areas of focused rural development within the agricultural area, which allow low intensity residential opportunities while maintaining the character of the surrounding countryside. Water and sewer services are not planed for these areas. Residential density is limited to 1.0 dwelling units per 2 acres."*

The Staff Report further notes, inter alia:

> *"The Department of Planning and Zoning disagrees with the Applicant that the County Council made a mistake in zoning the subject property AG/Agricultural District during the 1997 Comprehensive Zoning Review. There are many other AG/Agricultural District zoned parcels within the area. The AG/Agricultural District allows for low density residential development. The subject property is improved with a single-family dwelling and accessory structures in accordance with the Harford County Code. The development of the subject property is similar to the development of other AG/Agricultural District parcels that are located in the area. The Applicant has not provided a sufficient argument to justify that a mistake occurred in the zoning of the subject property during the 1997 Comprehensive Zoning Review. Therefore, the Department is recommending that the request to rezone the subject property from AG/Agricultural District to RR/Rural Residential District be denied."*

No testimony or evidence was given in opposition.

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APPLICABLE LAW:

Section 267-12A of the Harford County Code states:

"A. Application initiated by property owner.

(1) Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:

(a) The location and size of the property.

(b) A title reference or a description by metes and bounds, courses and distance.

(c) The present zoning classification and the classification proposed by the applicant.

(d) The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(e) A statement of the grounds for the application, including:

[1] A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation.

[2] A statement as to whether there is an allegation of substantial change in the character of the neighborhood and, if so, a precise description of such alleged substantial change.

(f) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.

> *(2) Concept plan. A concept plan shall be submitted by the applicant at the time the application is filed. The concept plan shall illustrate the proposed general nature and distribution of land uses but need not include engineered drawings."*

The Applicant requests a change in the zoning of the property. An initial presumption exists in the determination of whether any such request should be granted:

> *"It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action."* See Wakefield v. Kraft, 202 Md. 136 (1953).

It is a "rudimentary" principle of zoning review that there exists a:

> *". . . strong presumption of correctness of the original zoning and a comprehensive rezoning."* See Stratakis v. Beauchamp, 268 Md. 643 (1973).

In considering an:

> *". . . application for reclassification, there must first be a finding of substantial change to the character of the neighborhood or a mistake in the comprehensive plan."* See Hardesty v. Dunphy, 259 Md. 718 (1970).

Furthermore, case law dictates that legally sufficient evidence must exist to show "substantial change" in the character of the neighborhood, and not a "mere change" which may very well fail to rise to the level of being based upon legally sufficient evidence to justify a finding of change to the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989)

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants own an approximately 6 acre parcel located on Carrs Mill Road, virtually surrounded by the Fallston Volunteer Fire Department facility, Fallston High School complex, and the residential subdivisions of Mill Dale and Bell Meade. The subject property is improved by a single family home. The Applicants request RR zoning in order to create one additional lot from this parcel.

In support, Applicants argue that the property has no continued agricultural value, and to be more consistent with surrounding uses the requested rezoning should be granted.

Furthermore, Applicants correctly state in their Brief that;

> *". . . a parcel of land cannot be rezoned simply because the property owner wants the property rezoned or even if the zoning authority feels the property should be rezoned. Before any property can be rezoned, there must be evidence of a mistake in the zoning classification or a change in the character of the neighborhood since the last comprehensive zoning."* (See Page 6 of Brief.)

Applicants correctly summarize Maryland law. They also, accurately, describe their dilemma. They want the rezoning, but cannot provide legally sufficient and persuasive evidence of change or mistake. Accordingly, the application must be denied.

The Applicants make no argument of a change in the neighborhood since the time of the 1997 rezoning. The Applicants' only argument is that the Council, in 1997, made a mistake continuing the agricultural zoning classification of the parcel.

As support for this argument the Applicants set forth two premises. First is that the County Council in 1997 failed to take into account the Master Land Use Plan designation for the property which was (and continues to be) rural residential. The Applicants' expert witness, Mitch Ensor, testified that an agricultural zoning classification is inconsistent with such a Master Land Use Plan designation. However, contradicting Mr. Ensor's testimony is the position of the Department of Planning and Zoning which concludes that a agricultural zoning classification is, in fact, consistent with a rural residential Land Use Plan designation. Indeed, a rural residential designation is defined as areas;

> *". . . which allow low intensity residential opportunities while maintaining the character of the surrounding countryside . . . residential density is limited to 1.0 dwelling units per 2 acres."*

Accordingly, the continued use of this agriculturally zoned property for low density residential purposes, as it is today, is not inconsistent with a rural residential designation under the Land Use Plan. In fact, according to Mr. McClune, the rural residential classification of the Land Use Plan includes both agricultural and rural residential zoned land. It is, therefore, found that the inclusion of the agriculturally zoned property within a rural residential district as shown on the Harford County Master Land Use Plan is not evidence of mistake.

Furthermore, and perhaps more clearly, Maryland judicial decisions have long determined that the failure to comply with the applicable master land use plans is not evidence of a mistake;

> *"The approval of a master plan by the Planning Commission, while the plan is a factor to be considered by the Council, does not give rise to a presumption that there is a change in conditions or mistake in the original zoning. The plan does not take the place of the zoning in the Council's existing comprehensive plan, or shift the burden of proof upon the opponents of the proposed reclassification as to mistake or change."*

See Board of County Commissioners for Prince George's County v. Edmonds, 240, Md. 680, 215 A.2d 209 (1965). See also Board of County Commissions for Prince George's County v. Meltzer, 239 Md. 144, 210 A.2d 505 (1965).

The second premises advanced by the Applicants in support of their argument of mistake is that the Council failed to take into account the 1990 piece-meal rezoning of the larger portion of that parcel of which the subject property was once a part. That other piece is now the surrounding Mill Dale subdivision. The Applicants argue that as the Board of Appeals in 1990 found that the AG zoning of the Mill Dale property should be changed to RR in order to make it more consistent with the Master Plan, and as AG zoning was incompatible with the surrounding uses, the Council should have acted similarly in 1997 in its review of the zoning of the subject parcel. The Applicants argue;

> *"The 1990 piece-meal rezoning of the Mill Dale subdivision was an existing fact that was known or should have been known to the County Council during the 1997 Comprehensive Rezoning in which the County Council failed to take into account."*

Again, the Applicants present an argument which is simply not persuasive. No evidence is presented as to what information the Harford County Council actually had or did not have before it in 1997. Furthermore, it must be presumed that the County Council (the Harford County Council functions as the Board of Appeals) had before it, or at least available to it, the historical records of its own actions in 1990 in zoning the adjoining property RR.

It further does not necessarily follow that even if the Council was ignorant of its 1990 decision, that the subject property should have been granted RR zoning in 1997. The property is bordered on at least one side the institutional use of the Fallston Volunteer Fire Company. The Council in 1997 could easily have seen the subject property as a buffer between that institutional use and the residential subdivision of Mill Dale.

This, of course, is supposition. What is clear, however, is that by the guidance of Boyce v. Sembly, 225 Md. App. 43, 344 A.2d 137 (1975), the Applicants must present;

> *". . . **strong** evidence that there was a mistake in the comprehensive zoning. . . "* (emphasis supplied)

The Applicants simply fail to meet their burden. The Applicants cannot present sufficient and persuasive evidence to show that there were existing facts which the Council in 1997 failed to take into account, or trends or projects which were reasonably probable of completion in the future. (See Boyce v. Sembly.) To suggest that in 1997 the Council did not know of the 1990 Mill Dale piece-meal rezoning and, therefore, it was a mistake to continue the AG zoning of the subject property, is simply too tenuous an argument upon which to recommend a change based on mistake. Not only is there not strong evidence of mistake, there is, in fact, no evidence of mistake.

CONCLUSION:

Accordingly, for the above reasons, it is recommended that the rezoning of the subject property from AG/Agricultural to RR/Rural Residential be denied.

Date: January 15, 2008

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 13, 2008.